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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,766

05/05/2005

Bendik Bo

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23338 7590 02/14/2008  
DENNISON, SCHULTZ & MACDONALD  
1727 KING STREET  
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ALEXANDRIA, VA 22314

EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

PAPER NUMBER

3771

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,766	<b>Applicant(s)</b> BO, BENDIK	
	<b>Examiner</b> KRISTEN C. MATTER	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Action is in response to the Request for Continued Examination filed on 1/9/2008. Claims 1 and 27 have been amended and no claims have been added or cancelled. Currently, claims 19-36 are pending in the instant application.

#### ***Claim Objections***

Claims 32, 33, and 34 are objected to because of the following informalities: on line 1 in all the claims, "claims" should be changed to --claim-- since the claims are dependent on a single claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-21, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (US 2,902,993). Wagner discloses a massage device for humans (i.e., animals) comprising a functionally single layer plate (1) of a size and shape that can be considered to correspond to a stable, the device having an upper surface covered with a coating of a flexible material (16) for receiving the user (see Figure 4) and a plurality of flexible spacers (18, 19) each having a first end arranged on the lower surface of the plate and an opposite end free from attachment for placement on a floor or base (see Figure 1 and column 2, lines 1-10). At least one

motor (2) is mounted on the upper surface of the plate to cause vibrations and can be variably controlled by a controller (column 1, lines 60-65).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner.

Regarding claim 26, Wagner is silent as to the motor output range. However, it would have been an obvious design consideration to one of ordinary skill in the art at the time the invention was made to have operated Wagner's motor within a range of 0.1-2 kW for stimulating the muscles of the person because this range is well known in the art and it appears that the device disclosed by Wagner would perform equally well when operated within the selected range. Furthermore, Applicant admits in the disclosure that this is a "normal" range for a motor in these devices and therefore well known in the art.

Regarding claims 27 and 29, Wagner does not disclose at least two separate plate elements arranged adjacent to each other with a common inner axis. However, Wagner does disclose that the user can lie across the plate to massage either the upper body or lower body (see Figure 6 and column 3, lines 14-22). Placing two of Wagner's devices side-by-side so that the user can simultaneously massage both the upper and lower body is considered obvious to one of

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ordinary skill in the art and a mere duplication of parts that does not patentably distinguish the invention over the prior art. See also *In re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CCPA 1960). In addition, it appears as though the device of Wagner would perform equally well with two devices lying side-by-side so that the user could simultaneously massage both the upper and lower body.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner as applied to claim 19 above, and further in view of Clothier et al. (US 6,502,264). Wagner is silent as to a timer for automatically starting and stopping the motor. However, Clothier et al. discloses a massage motor with a timer for automatically starting and stopping the motors (see abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Wagner's device with a timing control as taught by Clothier et al. in order to allow a user to automatically start and stop the motor for application of a desired treatment.

Claims 28, 30, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner as applied to claim 27 above, and further in view of Antinori (US 5,787,528).

Regarding claims 28 and 30, Wagner is silent as to at least two plates elements physically hinged together to as to allow rotation about an inner axis. However, Antinori discloses a massaging device with two separate plate elements each having a motor physically hinged together to allow rotation about an inner axis (see Figure 1 and column 2, lines 20-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have physically hinged two of Wagner's devices lying side by side (as discussed above) together to

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allow rotation about an inner axis as taught by Antinori in order to allow a user to simultaneously massage both the upper and lower body and to alter the position of their body depending on the desired treatment. In addition, it appears as though the device disclosed by Wagner would perform equally well with the plates hinged together to allow rotation (see Figure 5 of Wagner, in which Wagner teaches inclining the device for therapeutic treatment).

Regarding claims 32 and 33, as discussed above with respect to claims 27 and 29, placing two of Wagner's modified devices side-by-side so that multiple users lying side-by-side can simultaneously massage both the upper and lower body is considered obvious to one of ordinary skill in the art and a mere duplication of parts that does not patentably distinguish the invention over the prior art. See also *In re Harza*, 274 F.2d 669, 671, 124 USPQ 378, 380 (CCPA 1960). In addition, it appears as though the modified device of Wagner would perform equally well with two devices lying side-by-side so that two users could simultaneously massage both their upper and lower bodies.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner as applied to claim 19 above, and further in view of Komatsu (US 5,442,710). Wagner discloses the plate as plywood or a material suitable for transmitting vibrations (column 2, lines 34-35) but is silent as to disclosing fibreboard of synthetic material. However, Komatsu discloses a vibration plate for a person that comprises a plate made of plastic and foam, soft, synthetic materials (column 4, lines 15-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the plate disclosed by Wagner with a lightweight synthetic material as taught by Wagner because it would have provided a lightweight material for

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transmitting the vibrations through the plate and to the user. In addition, it appears as though the device disclosed by Wagner would perform equally well if made of a synthetic material instead of plywood. See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960), in which the selection of a known material based on its suitability for its intended use supported a prima facie case of obviousness.

Claims 31 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner and Antinori as applied to claims 22, 28, 30, 32, and 33 above, and further in view of Grove et al. (US 6,010,468). Antinori discloses the means to rotate the plate sections can be any type of mechanical actuator that raises and lowers the sections (see column 2, lines 29-21), but is silent as to bellows cylinders. Grove et al. discloses that it is well known to rotate plates about an axis with bellows cylinders inflatable with a compressor (161) and controlled by a controller (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used bellows cylinders as taught by Grove et al. to rotate the articulated modified device of Wagner for allowing a user to accurately and automatically position himself or herself on the modified device in any desired position for receiving a massage on both the upper and lower body simultaneously.

### ***Response to Arguments***

Applicant's arguments with respect to claims 19-36 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen C. Matter/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771